

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 197 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SK CHAKRAVARTI

Versus

OIL AND NATURAL GAS COMMISSION

Appearance:

MR SANJAY SHAH for Petitioner
MR AJAY MEHTA for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/08/2000

ORAL JUDGEMENT

1. This appeal arises from impugned judgment and decree dated 15/10/1979 rendered by learned Judge of the City Civil Court, Ahmedabad (6th Court) in Civil Suit No. 2932 of 1975 dismissing the appellants' (plaintiffs')

suit for declaration that the two letters dated 7/6/1975 and 28/7/1975 issued by the defendant Oil and Natural Gas Commission (for short 'ONGC') are illegal, improper, discriminatory and malafide.

2. The plaintiffs served as electrical charginan with defendant ONGC. They joined as Electrician in 1960 with basic salary of Rs.100/- p.m. On account of periodical increments and revision from time to time they drew basic salary of Rs.350/- plus allowances. In December 1966 and January 1967 the defendant issued public notice inviting their employees to give option whether they would accept the Pay Rationalisation Committee Scheme (for short 'PRC') or to opt out of the scheme. Both the plaintiffs were drawing basic pay of Rs.181/- p.m. then. Under the PRC scheme their basic pay was likely to be fixed at Rs.175/-. They, therefore, did not accept the scheme. They ventilated their objections by writing letters to the defendant, but the defendant did not reply to such letters containing their representations. In 1968 the pay fixation of the plaintiffs was made with retrospective effect from April 1967. In view of such pay fixation basic salary was fixed at Rs.220/-. The plaintiffs did not get point to point increments in such pay fixation. Hence, in May and June 1968 they wrote a letter explaining their case. According to them, since PRC scheme was not applicable to their case, they should get point to point increment. They accordingly went on accepting their salaries under protest.

The defendant, however, accepted the plaintiffs' application and fixed basic pay at Rs.252/- with effect from April 1967 and granted increments as per application of the plaintiffs. They accordingly were drawing basic salary of Rs.350/- p.m. and other allowances. The defendant, however, issued office order dated 8/7/1975 showing that basic salary of the plaintiffs as on 1/4/1967 was Rs.212/- instead of Rs.252/- and the difference already paid would be recovered from the present and future salaries of the plaintiffs. The plaintiffs made representation objecting to this office order by letter dated 17/7/1975. The plaintiffs did not get reply to their letter, but received another letter dated 28/7/1975 informing them about their refixation of salary. The plaintiffs objected to such letter by communication dated 4/8/1975. No reply was given thereto. However, the plaintiffs came to know on 29/5/1975 that difference was going to be deducted from their salaries.

3. Under the aforesaid circumstances the plaintiffs

asserted that the deductions sought to be made from the plaintiffs' salaries would be illegal and arbitrary and, therefore, the defendant should be restrained from making such deduction. They also claimed declaration regarding the order of deductions being illegal and improper and passed in contravention of principles of natural justice. They asserted that such order was discriminatory and malafide. According to them such re-fixation of salary after about 7 years was illegal. They finally asserted that the administrative officer who signed the order, was not duly authorised in that respect.

4. The defendant resisted the suit as per written statement exh. 22. While denying the allegations contained in the plaint, it asserted that plaintiff no. 1 joined its services on 16/8/1960 as Electrician in the scale of Rs.100-5-125-6-155-EB-6-185. He was promoted as Chargeman (Electrical) with effect from 22/5/1968 in the scale of Rs.250-8-280-EB-10-340. Plaintiff no. 2 also joined the Commission on 11/8/1960 as Electrician and was promoted as Chargeman (Electrical) with effect from 10/7/1968 in the respective scale as aforesaid for plaintiff no.1. The plaintiffs' pay fixation at Rs.250/p.m. with effect from 1/4/1967 with next increment due on 16/8/1967 and 11/8/1967 respectively was found to be erroneous. Similar error was found in the pay fixation of one Mr. Verma, Chargeman. Hence, the error was rectified and the refixation was done at Rs.212/- with effect from 1/4/1967. In this view of the matter, the excess amount was to be recovered from the plaintiffs. As the refixation of pay was made in accordance with the prevalent rules and regulations, there was no question of any opportunity to be given to the plaintiffs as alleged. It was merely a mistake which was sought to be rectified. The payments made on account of such mistake could be recovered from future salaries. Hence, the defendant claimed dismissal of the suit with cost.

5. Following issues were framed at exh. 24 from the aforesaid pleadings :-

"(1) Do plaintiffs prove that the refixation of their pay is illegal ?

(2) Do plaintiffs prove that the order threatening the recovery on the basis of refixation is illegal ?

(3) Are the plaintiffs entitled to declaration and injunction asked for ?

(4) Does defendant prove that he has a right
to rectify the mistake and revise the
pay ?

(5) What decree and order ?"

The trial Court answered first 3 issues in the negative, fourth issue in the affirmative and dismissed the suit as aforesaid. That is how this appeal.

6. Mr. Sandip Shah argued the matter on behalf of the appellants (original plaintiffs) and Mr. Ajay Mehta, learned advocate made his submissions on behalf of respondent defendant - Commission. The facts which have been set out in the opening part of this judgment are not in dispute. The PRC report indicated revision in the scales of the concerned employees. The employees were given options to say whether they would opt for such revision or would continue with the old pay scale. At first the plaintiffs did not give their options either way. The invitation for giving of options clearly indicated that if the employees did not opt for the old scales, they would be deemed to have opted for the new scale. However, ultimately the plaintiffs noticed that they were at loss by not giving their options to continue with the old scale. The trial Court has observed as under in this respect :-

" In the accompaniment of 125/- memo dated 25th October, 1966 referred by me above, para. 4 lays down that option to come over to the new scale of pay, or to retain the existing one, may be exercised within three months from November 1, 1966 in the enclosed proforma. The option once exercised shall be final. Where an employee does not exercise his option within the specified time, it will be presumed that he has opted for the new scale of pay."

7. Now dealing with the aforesaid invitation of option plaintiff Mr. Tiwari exh. 26 testified that both the plaintiffs opted for being continued in the old scale and that option was submitted in time. However, this statement made in the evidence of Mr. Tiwari was not accepted by the trial Court as the same was in contradiction with the statement made in the plaint. Reference was made to exh. 28 being the representation made by the plaintiffs as late as 17/7/1975. The said

representation would clearly show that at the time of PRC the basic salary of the plaintiffs being Rs.181/- p.m. They did not opt for PRC scheme. As against such admission on the part of the plaintiffs the defendant examined witness Mr. J.V. Makhija, the Administrative Officer, Ahmedabad. He testified that as the plaintiffs did not submit any option during the stipulated period, they were automatically brought under the new scales. In view of the aforesaid facts placed on record, the trial Court came to the conclusion that the plaintiffs had not exercised the option to retain old scale or to opt for existing scale. Thus, the trial Court has found entire basis of the plaintiffs' case to be doubtful. Besides, it was also found that in the PRC scheme there was no provision for granting point to point increment in case of refixation. The trial Court has discussed at length the salient features of the PRC scheme as were relevant to the matter before the trial Court. The said aspect of the case being not in dispute, may not be repeated in this judgment. What is important to be noticed is that the plaintiffs did not exercise the option either way and as per the invitation of option they were deemed to have placed themselves in the new scale under PRC scheme.

8. Then came to the second stage with regard to what transpired when the plaintiffs made representation at a later point of time. It transpired that the plaintiffs had the occasions to make representation/application for refixation and such representation/application came to be granted (obviously through mistake). This happened somewhere in May 1975. The error so committed was sought to be rectified as per office order exh. 27 dated 7/6/1975, which was one of the orders under challenge. The said order has been reproduced by the trial Court and would read as under :-

"In pursuance of decision of General Manager, Baroda contained in letter No. RG/Estt/payfix/72/149 dated 14/5/75 the pay of Shri S.K. Chakravorty and S.B. Tiwari both Chargeman (Elect) erroneously fixed at Rs.252/- per month with effect from 1/4/61 is hereby refixed at the rate of Rs. 212/- per month with effect from 1/4/67 with next date of increment on 16/8/67 in respect of Shri S.K. Chakraborty and 11/8/67 in respect of Shri S.B. Tiwari.

This has the concurrence of finance and approval of Project Manager."

The plaintiffs made representation against the aforesaid office orders. But since they did not get any positive response they had the occasion to file the suit. Upon appreciation of evidence the trial Court came to the conclusion that there was an apparent mistake in accepting the revision in May 1975 and that mistake was required to be rectified and that was done by the aforesaid one of the impugned orders. The trial Court has made following observations in this regard :-

".... If such mistake has been found out later on, the Department is certainly at liberty to rectify the mistakes and recover the arrears otherwise the plaintiffs would have got unauthorised enrichment illegally and in contravention of the revision of pay scales both under the P.R.C. Report as well as the settlement report. The defendant's witness Shri Makhija has also explained the facts how the mistake was discovered. I have already pointed and has accepted his version that the plaintiffs did not submit any options within the stipulated period and were automatically brought to the revised scales under the P.R.C. Report. As far as the options under the Settlement he has also stated that both the plaintiffs have exercised their options accepting alternative I on 22/1/1968. He produced one of those options filled in by Chakraborty and stated that plaintiff No. 2 had also opted in the said manner. Hence the pay fixation was made at Rs. 220/- basic in the scale of Rs. 205-7-212-8-244-EB-8-260-10-300. The maximum of scale described by him goes further from Rs.260 to Rs. 300 with an annual increment of Rs.10/-. But the initial part of the scale remains the same and there is no dispute regarding the maximum revised by the defendant. He stated that this pay fixation was done in April, 1968. The plaintiffs, however, had some second thoughts and made representations. They requested that their option should be revised and they should be permitted to adopt alternative No. II. Here the accountant linked up the cases of these two persons with the case of one Mr. Varma. So the basic salary of those two persons was fixed at Rs.250/- instead of Rs.220/- on the analogy of Mr. Varma's case. But the mistake was discovered when Mr. Varma was transferred to

Ankleshwar. He was found to be junior to many electricians and still his salary was found to be higher. So his seniors made representations for stepping up their salary upto the limit of Mr. Varma's salary. That is how the case was referred to the Regional Officer of O.N.G.C. at Baroda. It is admitted that O.N.G.C. at Ahmedabad and Ankleshwar are subordinate to Regional office, Baroda. The cases were examined by the Director of Accounts and General Manager, O.N.G.C., Western Region. They concluded that fixation of salary of Mr. Varma by a local accountant, Ahmedabad was wrong. That is how Mr. Varma's pay was refixed. As the cases of present plaintiff were also linked up with Mr. Varma's case, the pay of both the plaintiffs was refixed on the line of pay fixation of Mr. Varma and orders were passed. The witness admitted that the plaintiffs can only benefit under alternative II if they retained their old scale under P.R.C. Report. The local accountant was not authorised to refix the salary of the plaintiff on the basis of such representations. Hence also the initial refixation by local accountant from Rs.220/- to Rs.250/- was incorrect. In cross-examination the witness admitted that the plaintiffs made an application for allowing him to opt alternative No. II. But he had not seen the actual representation. He, however, offered to produce the notes. These notings are produced at exh. 48. It stated that Chakraborty had applied alternative I for revised pay scale and his pay has been fixed at Rs.220/- with effect from 1/4/67. But in view of the representations, the file was submitted to the accountant. The accountant's noting is as under :-

'The official has earlier opted for Alt.I

and his pay was accordingly fixed in revised scales. Now he has come up with an application for refixation. The official was not benefitted by P.R.C. scales, because his pay which was Rs.181/- on 16/8/66 was fixed at the same stage of Rs.181/- w.e.f. 1/11/66 in P.R.C. scales. In similar cases, as per Jt. Manager's orders we have refixed the pay, if approved, pay may be refixed in this case also and consequential arrears also permitted.'

This note was submitted for approval to F & A.O.

His observations are as under :-

'I do not know why this case was left out. It is covered by Jt. Manager's orders and it appears to be a genuine omission. The pay be refixed under Alternative II on 1/4/67.'

In view of these notings the pay fixation was done by the local accountant, but the same decision has not been accepted and their fixation has been done in the light of Mr. Varma's case. It is not possible to say that such refixation is not due to any mistake, but with a view to harm the plaintiffs. After all the decision of the Regional Officer who had the authority to finally fix the pay scales must prevail over the decision of the local accountant. Shri Brahmabhatt who appeared at a later stage of arguments produced some additional papers with list exh. 55 and 50. The three pay slips of Shri Tiwari are produced at exhs. 51 to 53 showing how the existing pay of Rs.187/- in December 1967 was initially revised to Rs.228/- and paid in May 1968 and a further revision to Rs.260/- and paid in June 1968. These pay slips only reflect the salaries paid to these persons and show the basic pay in the right hand top column and would not throw any light as to how and under what provisions this refixation was made. Similarly he relied upon three office orders exhs. 56, 57 and 58 and urged that the past cases cannot be reopened. As far as exh. 57 and 58 are concerned, they have no bearing on the disputes. In fact exh. 57 contains the information regarding the alternatives already referred in exh. 39. The only relevant portion is the fact that the attention of all the employees was drawn that the exercise of option was compulsory and pay fixation cannot be done if the employee does not exercise his option. Shri Brahmabhatt, however, heavily relied upon para. 2 sub-para (ii) of exh. 56. This para. provides as under :-

'It has been decided that :- xxx xxx

(ii) cases otherwise decided in the post before issue of office order dated June 22, 1971, will not be reopened.'

Shri Brahmabhatt urged that in view of this

decision even if the pay fixation has been mistakenly fixed in 1968, it need not be reopened. It is not possible to accept this contention. The earlier part of the office order is also required to be read. It reads as under :-

A reference is invited to this office order No. LW/9 (50)/67-IRI Vol. VII dated June 22, 1971, and even numbered dated August 26, 1971, regarding fixation of pay under Memorandum of Settlement in respect of those employees, who opted the P.R.C. scale with effect from a date subsequent to April 1, 1967.' (emphasis supplied here)

The last portion is material and the decision would certainly relate to those cases where the employees had opted the P.R.C. scale with effect from a date subsequent to April 1, 1967. As discussed earlier, the plaintiffs had not exercised any option under the P.R.C. Report and automatically came under P.R.C. scale with effect from 1/4/1967. Hence this office order would not govern their case vis-a-vis fixation of pay under the settlement. In my opinion, the scope of exh. 56 is limited and would not be applicable to the plaintiffs' case. The office order referred in exh. 56 is also produced on record at exh. 59. It also shows that it was also in clarification for cases of employees who had opted for the P.R.C. scale with effect from a date late than 1/4/1967 and opted for scales under the Memorandum of Settlement with effect from 1/4/67. That is not the case applicable to the plaintiffs. Hence reading of exh. 59 and 56 would not be helpful to the plaintiff so far as the refixation of pay scale is under shown that the pay fixation of Rs.212/- is contrary to any rules. On the other hand, Shri Makhija expressed his personal opinion that instead of the pay initially being fixed at Rs.212/- by the Regional office it should have been fixed at Rs. 220/-. But that is not sought in this suit. If Mr. Makhija's opinion is correct the Department would certainly re-examine the case of the plaintiffs and revise the refixation from Rs.212/- to Rs.220/-. But no declaration as is sought in this case can be granted. The refixation cannot be said to be illegal when a mistake is detected and is sought to be rectified."

9. The aforesaid observations merit acceptance in so far as the prospective rectification of error is concerned.

10. The question is however with regard to past recovery as per the rectification of the error. It is not in dispute that the representations made by the plaintiffs were not decided at the time or even as on today. It has been submitted by the defendant that post decisional hearing was offered to the plaintiffs and the matter reached at the stage of passing of the orders. That stage has not been completed on account of the pending proceedings in the suit and the present appeal. It is under such circumstances that it has been submitted on behalf of the plaintiffs that there is violation of natural justice in so far as order regarding past recovery is concerned. It was at this stage that the matter was left pending for making inquiry with regard to what has happened to the past recovery. Mr. Ajay Mehta, learned advocate for the defendant has now communicated to this Court the instructions received by him from his client to the effect that the plaintiffs will once again be offered opportunity of hearing with regard to past recovery. In view of this statement made on behalf of defendant, no further submission remains to be considered. Even the trial Court has observed that the plaintiffs were not heard before order exh. 27 was passed. However, in view of the aforesaid submission made on behalf of the defendant in this appeal, nothing further survives with regard to past recovery.

In above view of the matter, this appeal deserves to be dismissed with a rider that the defendant is to give hearing to the plaintiffs with regard to proposed past recovery on account of rectification of the mistake committed by the defendant as elaborated in exh. 11 and exh. 27. Order accordingly. No order as to cost.

* * *

PVR.